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UNITED STATES SENTENCING COMMISSION

Annual Report

1986

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UNITED STATES SENTENCING COMMISSION

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Commissioner

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Commissioner (ex officio)

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STATEMENT OF THE CHAIRMAN

The United States Sentencing Commission, pursuant to the directive in 28 U.S.C. § 997, is pleased to present its 1986 Annual Report. This report summarizes the activities and accomplishments of the Commission since it began its work approximately one year ago.

After a necessary organizational period, the Commission's principal focus has been the development of an initial set of sentencing guidelines for the United States Courts. A preliminary draft of guidelines was published in the Federal Register for public comment on October 1, 1986, and copies of the draft were mailed to each member of Congress, Article III Judge, U.S. Magistrate, U.S. Attorney, Federal Public Defender, Chief U.S. Probation Officer and probation office, and hundreds of other individuals and groups who have expressed an interest in the Commission's work.

Since the publication and dissemination of this preliminary draft, the Commission has been analyzing written public comment and testimony presented at six public hearings held across the nation. As it redrafts and revises the guidelines, the Commission has sought assistance from a wide variety of persons with expertise in sentencing issues. The Commission plans to publish a more complete redraft of proposed sentencing guidelines in late January 1987 and will again submit them for public comment. The sentencing guidelines must be finalized and submitted to Congress, pursuant to the statutory requirements, by April 13, 1987.

The Commission is grateful to the hundreds of individuals and groups who have generously given of their time and expertise in helping the Commission with its work. The task of drafting an intellectually sound, workable set of sentencing guidelines for the several thousand Federal criminal statutes and assimilated state crimes has proved an awesome task, particularly in view of the tight timetable under which the Commission has had to operate. Yet, with the excellent cooperation we have received from the Department of Justice, other Federal agencies, the Federal Judiciary, Congress, private practitioners and other interested parties, the Commission is on schedule to complete its assigned tasks.

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Our Commissioners are cognizant of the historic, far-reaching and dramatic impact which their work is expected to have on the sentencing process and federal criminal justice system. Our goal is to produce sentencing policies that promote uniformity, certainty, fairness and justice for individual defendants, crime victims, and society. This report is intended to summarize the progress which the Commission has made toward these goals in the initial year of its work.

William W. Wilkins, Jr.
Chairman

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I. INTRODUCTION

Presently, judges in our federal criminal justice system are provided little legal guidance when confronted with the complex issue of sentencing a convicted offender. The lack of specific guiding rules has adversely affected the administration of justice by producing unwarranted disparity in sentencing. Analysis of past and current sentencing practices reveals that offenders with similar characteristics who commit similar crimes receive sentences that vary dramatically. This disparity has produced a system of justice that lacks an appropriate degree of certainty of punishment and, most importantly, fairness to the offender, the victim, and society.

After more than a decade of bipartisan efforts, the 98th Congress passed legislation that, in addition to other major criminal justice reforms, created the United States Sentencing Commission ("Commission"). Under its mandate from Congress, the Commission's primary responsibility is to establish sentencing policies and practices for the federal courts that avoid unwarranted disparity and meet the four purposes of sentencing: just punishment, deterrence, incapacitation, and rehabilitation. The Commission's goal is to provide a structure and framework for sentencing decisions so that similar offenders who commit similar offenses are sentenced in a similar fashion. The Commission's intention is that these efforts will both ensure fairness and contribute to the reduction of crime.

The most pressing task of the Commission is to develop an intellectually sound, consistent, and workable set of sentencing guidelines for submission to Congress by April 1987. After the initial guidelines take effect, the Commission is charged with the ongoing responsibility of measuring the impact of the guidelines and their effectiveness in meeting the enumerated purposes of sentencing. In the years after initial implementation, the Commission will propose guideline amendments to Congress as revisions are needed and as new criminal statutes are enacted.

From its inception, the Commission has conducted its business openly, for it believes that this unique opportunity for sentencing reform can best be accomplished with full participation by all interested parties. Public policy is only as good as the quality and breadth of the public input that goes into its creation. The Commission has solicited comment

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from hundreds of individuals, organizations, and government agencies with an interest in the federal criminal justice system. In keeping with this philosophy, the Commission voted to publish a preliminary working draft of sentencing guidelines well in advance of any required publication date in order to provide a vehicle for critical analysis and public comment. While the guidelines in the September 1986 preliminary draft (published in Vol. 51. No.190 of the October 1, 1986, Federal Register, p. 35079-133) do not reflect the views of all Commissioners, the Commission voted for publication to provide a means for identifying the issues that must ultimately be resolved. The Commission realized that it incurred a risk by publishing an early draft prior to constructing guidelines for all offenses, before necessary refinements are made in guideline factors and values, and before necessary empirical research was completed. The alternative, however, would have severely limited public input, given the Commission's tightly compressed time schedule, and the Commission found this unacceptable.

The preliminary draft sought to accomplish several goals. The first was to focus public attention on a proposed format, a possible structure and suggested sentencing ranges. The format, structure, and sentencing ranges are all in the process of being reconsidered by the Commission in light of further deliberation, continued empirical research, and the receipt of written and oral comment.

The September 1986 draft publication also highlighted a series of difficult policy issues that must be resolved before the final guidelines are submitted to Congress. These policy issues were underscored for public comment because their resolution will determine, to a great extent, the final guidelines.

As this report goes to the printer, the Commission is preparing to publish and disseminate for public comment a substantially revised version of proposed sentencing guidelines and policy statements. This revision will address concerns raised about the September 1986 draft, be markedly simpler in operation, preserve a greater measure of structured judicial discretion, and cover in more detail issues omitted or discussed only in outline terms in the earlier draft.

The Commission's sentencing data collection and analysis efforts are ongoing. A model for comparing sentences under the guidelines to current sentencing practices has been constructed and is being perfected for use by the Commission in refining and testing the values in the

guidelines. The Commission is also working with the Federal Bureau of Prisons in order to assess the impact of sentencing guidelines on federal correctional resources.

These efforts to assess the impact of the guidelines on the justice system, as well as changes in the crime rate, will continue after the guidelines are implemented. The Commission will closely monitor the effectiveness of the guidelines in meeting the purposes of sentencing and will recommend to Congress legislative changes to strengthen the system and eliminate unfairness. Significantly, for the first time in the history of the federal criminal justice system, the commitment to an efficient and just sentencing system will be inextricably linked to a continuous monitoring and measurement process. Refinement and improvement will be ongoing.

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II. COMMISSION AUTHORITY AND RESPONSIBILITY

The United States Sentencing Commission is an independent agency in the judicial branch of government composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

As specified in 28 U.S.C. § 991(b), the policies, practices and sentencing guidelines established by the Commission are designed to:

1. effectuate the purposes of sentencing enumerated in 18 U.S.C. § 3553(a)(2) (in brief, those purposes are just punishment, deterrence, incapacitation, and rehabilitation);

2. provide certainty and fairness in meeting the purposes of sentencing, with these goals to be achieved by avoiding unwarranted sentencing disparities among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating or mitigating factors; and

3. reflect, to the extent practicable, advancement in knowledge of human behavior as related to the criminal justice process.

The Commission is also charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, including the impact on the resources of the Bureau of Prisons; recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, as well as revisions of the sentencing guidelines; establishing a research and development program on sentencing practices and procedures; and other related duties.

Created by the sentencing reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984), the Commission's authority and duties are set out in Chapter 58 of Title 28, United States Code. Procedures for implementing the guidelines system of sentencing are prescribed in a new Chapter 227 of Title 18, United States Code.

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The statutory authority affecting the Commission has been amended by Congress. Public Law 99-217 (December 26, 1985) postponed by twelve months, until April, 1987, the deadline for submission to Congress of the initial set of sentencing guidelines. That legislation also postponed until November 1, 1987, the effective date for the sentencing procedure revisions that accompany the guidelines. Public Law 99-363 (July 11, 1986) clarified the authority of the Commission to write policy statements concerning the imposition of fines and permitted a maximum variation of six months or 25 percent, whichever is greater, between the minimum and maximum sentences of incarceration in a guideline range. This same legislation also provided that if the maximum sentence is life imprisonment, the minimum sentence must be at least 30 years. Public Law 99-646 (November 10, 1986) made various technical corrections in both the authority of the Sentencing Commission and the sentencing procedures which will become effective with the guidelines. Public Law 99-570, the Anti-Drug Abuse Act of 1986 (October 27, 1986) contained several provisions affecting supervised release for offenders and provided direction to the Commission to take into account cooperation of defendants in the investigation or prosecution of other offenders.

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III. COMMISSION ORGANIZATION AND OPERATION

Unlike many special purpose, "study" commissions within the Executive Branch, the U.S. Sentencing Commission is an ongoing, independent entity within the Judicial Branch. Voting members of the Commission hold full-time positions until six years after the initial set of guidelines go into effect, after which their positions become part-time, except that the Commission Chairman shall continue to be a full-time post. Because of the Commission's unique status and continuing mission, it has been necessary for the organization to devote significant time, efforts and expenditures in its initial year to putting in place a structure, staff, facilities and plans for carrying out its responsibilities. While continuing to make modifications and improvements as experience deems necessary or desirable, the Commission feels that it has largely accomplished these preliminary organizational and legislative tasks.

Internal Organization and Operation. In order to fulfill its responsibilities and meet foreseeable needs, the Commission created a number of internal committees. Several of the committees, such as the Committee on Office Administration and the Committee on Alternatives to Incarceration, have had an ongoing functional role, while others have been oriented to a specific aspect of guidelines development. In this respect, the Commission has increasingly relied on informal working groups which have met from time to time on an ad hoc basis to assist with developing the initial set of guidelines and other specific tasks. The operative procedure with respect to each internal committee and working group has been that all policy decisions are tentative until reviewed and ratified, or otherwise determined, by the full Commission.

The Commission has established necessary internal policies and procedures for its members and staff. Since the Commission is an independent entity within the Judicial Branch, the Commission has elected, in a number of instances, to adopt policies and procedures which have been established for other Judicial Branch personnel.

Staffing. The Commission's budget request and appropriation provided for 50 permanent staff positions in Fiscal Year 1986 and 54 in Fiscal Year 1987. The current operating staff is approximately 45 persons. Of these, approximately one-third are legal staff; approximately one-half are clerical, administrative or other support personnel; and the balance are research specialists. In order to conserve its financial

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resources and assemble an experienced staff as quickly as possible, the Commission has arranged to borrow several employees (included in the current operating figure) from other Federal agencies.

All staff activities and the specific task of sentencing guideline preparation are supervised and coordinated by an executive director, who in turn is responsible directly to the Commission through the Chairman. The research staff and research program are coordinated through a research director who reports to the Commission through the staff executive director.

Budget and Expenditures. The Supplemental Appropriations Bill for Fiscal Year 1985 (Public Law 99-88) provided an initial appropriation of $2,350,000, to remain available until expended, for the Sentencing Commission. This initial funding was augmented by an appropriation of $1,100,000, also to remain available until expended, in the Fiscal Year 1986 regular appropriations bill for the Departments of Justice, Commerce, State, the Judiciary and Related Agencies (Public Law 99-180). Of this latter $1.1 million appropriation, $47,000 was sequestered pursuant to Public Law 99-177. Thus, the total available funds for Fiscal Year 1986 were $3,403,000. The appropriation for Fiscal Year 1987, provided in Public Law 99-500, is $5,800,000.

The following table presents the Commission's budget obligations by major object classification for Fiscal Years 1986 and 1987, together with actual disbursements by the Administrative Office as directed by the Commission through September 30, 1986.

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UNITED STATES SENTENCING COMMISSION

Budget and Expenditures
(Dollar amounts in thousands)

	FY 1986 Estimate	FY 1986 Actual Disbursements	FY 1987 Revised Estimate
Personnel Compensation	$1,273	$1,134	$2,070
Personnel benefits	247	153	314
Travel and transportation of persons	210	97	450
Communications, utilities, and other rent	325	250	432
Printing and reproduction	75	4	200
Other services	1,105	53	2,483
Supplies and materials	25	204	33
Equipment	190	218	65
Total obligations	$3,450	$2,113	$6,007

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IV. AGENCY COOPERATION

As authorized by 28 U.S.C. §§ 995(a)(10), (11)(b) and 11(c), the Commission has arranged with a number of other Federal Agencies for specific functions and services and for the sharing of available information.

The Administrative Office of the United States Courts. The Administrative Office has assisted the Commission by performing various administrative tasks, including the handling of employee pay and benefits, payment of approved vouchers, accounting, budget submission and other duties.

At the Commission's request, the Administrative Office has also made available extensive data collected under its Federal Probation and Parole Supervision Information System (FPPSIS). Moreover, the Commission has received invaluable assistance from the Probation Division of the Administrative Office and probation officers throughout the nation. In addition to advising the Commission on the development of workable sentencing guidelines, many probation officers assisted in the completion of Commission-prepared presentence coding instruments on approximately 10,500 offender cases selected from the FPPSIS data file. Probation offices also furnished to the Commission, under terms designed to protect confidentially, presentence investigation reports on these sampled cases.

The Federal Judicial Center. The Center and its research staff have been helpful to the Commission in a variety of ways. At the request of the Commission, the Center prepared a study entitled "Punishments Imposed on Federal Offenders" for the purpose of providing basic reference points on current sentencing practices. Following publication of the preliminary draft, the Center's research division prepared a report comparing the draft sentencing guidelines to current sentencing practices. The Center has also provided summaries of sentencing institute discussions and valuable feedback to the Commission on preliminary working drafts and revisions of sentencing guidelines.

U.S. Department of Justice. On numerous occasions, divisions, sections and personnel within the Department have routinely provided legal research, library resources, information, advice and other assistance to the Commission. At the request of the Commission, the Criminal Division prepared for the Commission's use in guideline drafting a

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comprehensive report on offense severity and offense characteristics. The Department also prepared a comprehensive evaluation of the preliminary draft sentencing guidelines.

Federal Bureau of Prisons. Because of the potential impact of the Commission's sentencing guidelines on correctional resources and the statutory responsibility to assess and consider that impact, the Commission has worked closely with the Director of the Federal Bureau of Prisons and his staff. At the request of the Commission, the Bureau arranged a tour of several of its correctional institutions for Commissioners and staff. Facilities visited were the Allenwood Federal Prison Camp at Montgomery, Pennsylvania, a security level one facility; the Otisville, New York Federal Correctional Institution, a security level three facility; and the United States Penitentiary at Lewisburg, Pennsylvania, a security level five institution.

The Bureau also has assisted the Commission by providing data on the inmates within its jurisdiction. The Commission is using these data to compare the guidelines to current sentencing practices and assess prison impact. With respect to the latter, the Commission has created an internal Prison Capacity Committee. In close cooperation with the Bureau, the Commission is developing a computer program to determine the impact of the proposed sentencing guidelines on Federal prison capacity and correctional resources.

The Bureau of Prisons also has been of great assistance to the Commission in printing and distributing the preliminary draft sentencing guidelines.

U.S. Parole Commission. Another agency from which the Commission has received considerable support is the U.S. Parole Commission. This assistance has been facilitated by the fact that the Chairman of the federal paroling authority serves as an ex officio member of the Sentencing Commission. The Parole Commission provided two significant data bases for the Sentencing Commission's use. One data file contained offense and offender characteristics and release decisions for all defendants within the Parole Commission's jurisdiction since 1973. The second contained the results of recidivism studies which integrated parole release guidelines data with post-release information from federal and state authorities. Parole Commission staff met regularly with Sentencing Commission personnel to acquaint them with the data, explain the documentation and examine empirical findings. Additionally, computer

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programs were developed and executed using other Parole Commission data at the specific request of Sentencing Commission research staff.

Other Executive Branch Agencies. The Commission solicited information from a number of federal agencies regarding the specific nature and number of criminal offenses occurring within their areas of responsibility. In addition to responses provided by the Department of Justice, information was furnished by the Departments of the Treasury, Defense, Education, Health and Human Services, Interior, and Labor, the Federal Deposit Insurance Corporation, the U.S. Postal Service, and the Securities and Exchange Commission. Many of these agencies cited sentencing factors they believed important in cases within their respective jurisdictions. The Commission also received assistance and cooperation from a number of Executive Branch departments in drafting and revising specific parts of the sentencing guidelines.

General Accounting Office. Section 235(a)(1)(B)(ii)(II) of the Comprehensive Crime Control Act of 1984 provides that immediately after the Commission submits the initial set of sentencing guidelines to Congress, the General Accounting Office shall conduct a study of the guidelines and their potential impact in comparison with the existing sentencing and parole system. The GAO report must be submitted to Congress within 150 days of submission of the guidelines.

Cognizant of this important responsibility given to the GAO, the Commission has cooperated with that agency throughout the past year in supplying a variety of research data and other information. The entire Commission met with GAO senior officials on April 29, 1986, to discuss statutory responsibilities and plans for accomplishing these tasks in a cooperative manner. Subsequently, there have been regular contacts among GAO, the Commission Chairman, and Commission personnel to discuss progress and supply information. Pursuant to GAO requests, the Commission has provided its research methodology and data files on previously sentenced offenders. Additionally, the Commission is providing copies of all Commission meeting summaries after their approval, all public hearing testimony, and a variety of Commission working documents.

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V. ACTIVITIES RELATING TO GUIDELINES DEVELOPMENT

Although the Commission has a number of longer range responsibilities, including continuing research and sentencing information dissemination, the emphasis of its work since its members assumed office in October 1985 has been the development of an initial set of sentencing guidelines and related policy statements. This has been necessary in view of the fact that the statute provided only eighteen months (taking into account the one-year extension granted by Congress in December 1985) for promulgation of detailed guidelines covering in excess of 2,600 Federal criminal offenses. The approach adopted by the Commission has involved drawing on the expertise of persons and groups knowledgeable on sentencing issues to the extent possible. The Commission also realized that the limited time frame for guideline preparation would not permit extensive original research on sentencing issues and philosophies. Although the Commission has established its own research staff and programs, it has necessarily relied considerably on the existing body of sentencing information, research findings, and scholarly writings.

Advisory and Working Groups. One of the Commission's first actions was to establish advisory and working groups with whom the Commission could consult on a continuing basis as it considered sentencing issues and drafted preliminary guidelines. Each of the following groups were represented in this effort: United States Attorneys, state district attorneys, federal probation officers, Federal Public Defenders, defense attorneys, researchers, and federal judges. In addition to receiving written comments and critiques from members of these groups, the Commission, over a period of several months, invited representatives of each group (including three groups of federal judges) to participate in working sessions with the Commission. During these sessions, early drafts of guidelines were examined and many of the important issues facing the Commission were given a full airing.

Topical Hearings. In order to have the benefit of a wide range of informed views, the Commission solicited written advice from hundreds of criminal justice practitioners, interest groups, and other interested individuals and organizations in conjunction with a series of five public hearings convened in Washington, D.C. The topics of these public hearings were: Offense Seriousness Ranking (April 15, 1986); Offender Characteristics: Prior Record (May 22); Organizational Sanctions (June 10); Sentencing Options (July 15); and Plea Agreements

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(September 23). In connection with these hearings, the Commission received oral testimony from some 46 witnesses and written comments from more than 400 additional respondents. Those contributing to the hearing process included government officials representing all facets of the criminal justice system at the federal, state, and local levels; private attorneys; interest and advocacy groups espousing a range of philosophies; various specialists in sentencing issues; victim advocates, and inmates. These public hearings and written comments significantly contributed to the development of preliminary sentencing guidelines.

Meetings. Since its inception, the Commission meetings have been open to the public. Although most of the work involved in drafting the preliminary guidelines necessarily was accomplished in informal working groups, the Commission has used its meetings to set an overall agenda and direction for the development of the guidelines, as well as to discuss, revise, and approve drafts as they have been presented to the Commission. Commission meetings also have included informational briefings and discussions with a wide variety of resource groups, including the Committee on the Administration of the Probation System and the Federal Judicial Center Committee on Comprehensive Crime Control Act Education Programs, Judicial Prisons, the National Institute for Sentencing Alternatives, the Community Corrections Division of the National Institute of Corrections, various government agencies having law enforcement responsibilities, defense attorneys, and criminal justice scholars.

In-House Research. The Commission established a research program to assist in the development, implementation, monitoring, and evaluation of the guidelines. The research staff has collected and will continue to collect pertinent data, including detailed information on past sentencing and correctional practices and the post-conviction activities of probationers and parolees. These data are being used or will be used for several purposes: to describe offenses and offenders who are convicted in federal court; to determine which offenders pose a high risk of recidivism; to test the application of the guidelines to actual cases; to predict the impact of the guidelines on federal prison population and other components of the federal criminal justice system; and to monitor the use of the guidelines by the federal courts. In addition to performing empirical research, the research unit reviews criminal justice research, advises the Commission about the application of scientific theory and knowledge to sentencing practices, and provides general technical and computer support.

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Field Research and Related Activities. The Commission has traveled across the nation to obtain information and advice as well as to give presentations regarding its efforts.

Commissioners and staff visited federal prisons of various classifications to gain firsthand awareness of the current facilities and operations of the Federal Bureau of Prisons. In addition, Commission staff visited a number of states and communities in which a variety of sentencing options other than imprisonment were being used. Staff visited numerous intensive probation supervision programs, including those using house arrest, electronic monitoring, and community residential facilities. Specifically, staff met with officials of the New Jersey Intensive Supervised Probation Program; the Massachusetts Intensive Probation Program; the Quincy, Massachusetts District Court; the San Mateo County, California Adult Probation Office; the Texas Adult Probation Commission; and the Georgia Department of Offender Rehabilitation. Additionally, Commission staff met with officials of the Massachusetts Commission on Correctional Alternatives and officials of the intensive supervision program formerly operated by the state of Washington.

The fine collection and community service programs of a number of state probation departments were studied. In its efforts to establish reasonable and collectable fines and to determine an offender's likelihood and ability to pay fines, Commission staff met with officials of several banking and financial institutions, including the Fair-Isaac Companies and the Bank of America in California, and the Credit Bureau, Inc., in Atlanta, Georgia. In addition, Commission staff met with the Vera Institute of Justice in New York City about its community service programs.

Commission representatives met with United States Probation Officers at a number of regional seminars and district-wide staff meetings. Through these meetings, the Commission received input from officers in the majority of federal judicial districts. In conjunction with the Federal Judicial Center, the Commission produced a video tape recording covering sentencing guideline issues of concern to probation officers.

The Commission Chairman, other Commissioners and key staff have addressed or participated in discussions with numerous interested groups during the past year concerning the work of the Commission. These

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forums have included several Judicial Conference sentencing institutes, other Circuit and U.S. Judicial Conference meetings, and a wide variety of other gatherings of criminal justice and business persons.

Preliminary Draft Publication and Dissemination. In order to provide a specific vehicle for public comment, the Commission published a preliminary draft of an approach to sentencing guidelines in late September 1986. This document was distributed to each member of Congress, Article III Judge, United States Attorney, Federal Public Defender, U.S. Magistrate, Chief United States Probation Officer and several copies to each U.S. Probation Office. Copies were also sent to hundreds of other individuals and groups on the Commission's mailing lists, including defense attorneys, academics, victim advocates, and private and professional membership groups. Additionally, the Commission has provided the document to all those who have requested it and supplied three copies to each Federal correctional institution library, resulting in a dissemination of approximately 6,500 copies of the preliminary draft. The preliminary draft also was published in the October 1, 1986, edition of the Federal Register (Vol.51 No.190), in which it appears as a separate Part II at pages 35079-133.

Public Hearings. In order to structure and facilitate additional public comment on the preliminary guidelines, the Commission held a series of open regional hearings as follows:

October 17, 1986 -- Chicago
October 21, 1986 -- New York City
October 29, 1986 -- Atlanta
November 5, 1986 -- Denver
November 18, 1986 -- San Francisco
December 2-3, 1986 -- Washington, D.C.

The format of each of these public hearings permitted testimony from a diverse group of invited witnesses at each location, as well as an opportunity for comments from any other member of the public in attendance. Notice of the hearings was contained in the preliminary guidelines document published in the Federal Register and distributed by the Commission, as well as through the media in each hearing location. The Commission received testimony on the draft guidelines from a total of over 100 spokespersons at these six regional hearings.

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Written Comments. During an approximate 60-day public comment period ending on December 3, 1986, the Commission solicited and received written comments on the preliminary draft guidelines from hundreds of individuals and groups. The Commission devised an internal cataloguing and distribution system for handling of public comment. Under this system, as the written submissions were received they were indexed according to author and topic. Copies were then immediately distributed to all Commissioners and to staff assigned to assist in revision of specific parts of the preliminary draft. Topical and author indices showing all comment received were also distributed weekly.

Revision of the Preliminary Draft. Because of the time constraints, the Commission did not wait until the end of the comment period and conclusion of the regional hearings to begin the process of revising the preliminary draft guidelines. In fact, the editing and revision process has been ongoing from the time of publication of the preliminary draft, and the system for organizing and reviewing all public comment has insured that these views are analyzed and considered in the continuing revision process.

In light of the public comments, additional research and further deliberation, the Commission is revising the proposed structure, offense and offender characteristics, sentence determination procedure, and numerical values presented in the preliminary draft. Additionally, guidelines for offense categories not covered in the draft, as well as guidelines and/or policy statements relating to critical issues such as multiple offenses, fines and organizational sanctions, are now being drafted.

Refinement of Numerical Values. Much of the criticism directed at the preliminary draft has been focused on the numerical values contained in it, in spite of the fact that the Commission emphasized that the values in the draft were highly tentative and were included primarily to illustrate the operation of the guideline structure. The Commission is aware of the importance of the values assigned in the final guidelines, not only for the defendants directly affected by sentencing decisions, but also for the courts, prison system, probation officers, prosecutors, defense attorneys and policymakers. The Commission is attempting to bring thoughtful, informed judgments to the assignment of numerical values--judgments that will consider current sentencing practices, projected prison impact, recent crime incidence and trends, and other available information relative to the achievement of the enumerated sentencing

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purposes. In this regard, the Commission and its legal and research staff are finalizing methodology for comparing recent sentencing practices to sentence ranges called for under the proposed guidelines. The Commission personnel are also working closely with the Bureau of Prisons on methodology for assessing the impact of the revised guidelines on prison capacity and other correctional resources, including those of the U S. Probation Service.

These assessments are critical to final decisions on the numerical values. They also will enable the Commission to make informed recommendations to the Administration and Congress concerning penal and correctional resources and needed changes in criminal law and sentencing practices.

Publication of Revised Draft. The Commission is proceeding on a work plan and timetable which call for publication of a revised and more nearly complete version of sentencing guidelines in late January 1987. As required by statute, these proposed guidelines will be published in the Federal Register and will be subject to public comment for a reasonable period of time.

Final Revision and Submission to Congress. The Commission work plan and timetable call for consideration of all additional public comment on an "as received" basis. Further refinement of the guidelines will proceed as additional data and information is available to the Commission. Final revisions and decisions are expected to be made in a timely but well-considered manner that will permit submission to Congress of the guideline, including reasons for the Commission's recommendations, by the statutory deadline of April 13, 1987. Thereafter, the Commission expects to continue its cooperation with the General Accounting Office as that agency prepares its guideline impact analysis. The Commission will also be prepared to work with the Administration and Congress on any legislation that may be necessary to ensure practical implementation and effectiveness of the guidelines, as well as to respond to Congressional requests for additional information supporting or explaining the Commission's recommendations. Unless contrary action is taken by law, the guidelines will take effect six months after their submission to Congress.

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VI. PROGRESS TOWARD OTHER GOALS.

Although the principal responsibility and activity of the Commission has been the promulgation of an initial set of guidelines, its long-term mission is broader. This section briefly summarizes some of the work the Commission has undertaken in pursuit of other statutory responsibilities.

Further Guideline Revision and Promulgation. Under 28 U.S.C. §§ 994(n) and (o), the Commission is to periodically review and revise the guidelines and submit guideline amendments to Congress. As the Commission has gone about the work of developing an initial set of sentencing guidelines, it has become increasingly appreciative of the complexity of the task and the dramatic degree of change that will necessarily result from the sentencing guidelines and related procedural reforms enacted by Congress. As a result, the Commission expects its work to be evolutionary in nature. Practical experience with sentencing under a guidelines system, additional research, including advancements in the knowledge of human behavior as it relates to the criminal justice process (see 28 U.S.C. § 991(b)(1)(C)), and the enactment or amendment of criminal statutes by Congress will necessitate a regular, ongoing task of guideline drafting and revision.

Measuring Effectiveness in Meeting Sentencing Purposes. Under its statute (28 U.S.C. § 991(b)(1)), the Commission has the responsibility of developing sound, effective and progressive sentencing policies and practices. Its second basic purpose, outlined in 28 U.S.C. § 991(b)(2), is to develop means of measuring the degree to which sentencing, penal and correctional practices are effective in meeting the purposes of sentencing (namely, just punishment, deterrence, incapacitation and rehabilitation).

While viewing this as a longer range purpose, the Commission has taken some steps toward fulfilling this objective. First, the Commission has had a number of discussions at formal and informal meetings and has received testimony at its various hearings relating to sentencing purposes. Secondly, it has collected preliminary research data which should prove helpful in accomplishing this purpose. Third, it has canvassed various federal law enforcement agencies, seeking both empirical data and views relating to how sentencing practices might more effectively deter and reduce crime. Finally, the research efforts now underway, while having as their primary purpose the comparison of the sentencing guidelines to current practices and the assessment of prison impact, will also prove useful in achieving the longer range purpose described in 28 U.S.C. § 991(b)(2).

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Prison Impact. Pursuant to 28 U.S.C. § 994(g), the Commission is to be cognizant in its guideline drafting of the nature and capacity of penal and correctional facilities and services. Furthermore, the statute directs the Commission to formulate guidelines which will "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission," and to make recommendations concerning penal and correctional facilities and services which the guidelines may require. The Commission is working closely with the Bureau of Prisons so that it will be in a position to fulfill this mandate. The Commission view continues to be that the statute and legislative history direct the Commission to construct guidelines which will best serve the purposes of sentencing, with impact on prison and correctional facilities to be considered, but not to necessarily constrain or drive the decisions.

In order to accomplish this objective, reliable data on current inmates, in terms of the characteristics relevant under the guidelines, and actual time served or expected to be served must be available. Additionally, the task is complicated by the fact that Congress has recently enacted legislation relating to drug trafficking and other criminal offenses which is expected to increase the federal prison population. Thus, an accurate assessment of the guidelines' impact on prison resources must be measured against a changing, increasing base population. The methodology for making such a prediction with reasonable certainty is difficult to develop and calls for a number of assumptions which may not be borne out in actual practice; however, the Commission and Bureau of Prisons are closely cooperating in the use of research staffs and facilities to achieve as accurate a measurement as reasonably can be obtained.

Under 28 U.S.C. § 994(p), the Commission and the Bureau of Prisons have a broader, long-term task of analyzing the optimum utilization of resources to deal with the Federal prison population and reporting to Congress on the results of the joint study. No statutory date is set for accomplishing this task; however, the Commission is aware of it and expects that its current cooperative work with the Bureau of Prisons will provide a useful foundation for this future effort.

Other Objectives. As it moves into its second year of operation, the Commission is mindful of other objectives prescribed for it in its governing statute.

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Among these responsibilities is that of recommending to Congress needed changes or additions to criminal law and procedure (See 28 U.S.C. §§ 994(q) and 995(a)(20)). In the process of guideline preparation, the Commission is identifying a number of areas where legislation may be desirable. It will be reporting to Congress recommendations of this nature at a future date.

The Commission will have an important sentence monitoring and evaluation responsibility once the guidelines are in effect (See 28 U.S.C. §§ 994(w) and 995(a)(9), (15), and (16)). Preliminary discussions have occurred with the Probation Division of the Administrative Office, federal judges, and others concerning the means and necessary resources for accomplishing these tasks in an efficient and effective manner.

Sentencing research, data collection, material publication, and information dissemination are significant responsibilities conferred on the Commission (See 28 U.S.C. §§ 995(a)(12), (13), (14), (15) and (16)). The Commission is developing a library of sentencing publications and information. It has ongoing research and data collection programs which will give greater emphasis to these particular responsibilities once the initial guidelines are promulgated.

Education concerning guideline and policy statement application and other sentencing issues will be a Commission priority following submission of the guidelines to Congress (See 28 U.S.C. §§ 995(a)(10), (12), (17), and (18)). The Commission has already begun the process of educating judges, probation officers, attorneys and others about sentencing guideline issues and applications through its series of five topical hearings and six regional hearings on the preliminary draft guidelines. Also, each of the above groups has been represented in working sessions with the Commission and its staff on sentencing issues and guideline drafting.

In order to prepare educational materials and programs for future use, the Commission has detailed a senior staff member to the Federal Judicial Center. The Commission will be working closely with the Center, the Administrative Office of the U.S. Courts, the Department of Justice and others to design and implement instructional programs which will help prepare those who must apply the sentencing guidelines in the federal court system.

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